



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2012 REGULAR SESSION

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HOUSE BILL NO. 349

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FRIDAY, FEBRUARY 24, 2012

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The following bill was reported to the Senate from the House and ordered to be printed.

RECEIVED AND FILED  
DATE April 4, 2012  
3:07 pm  
ALISON LUNDERGAN GRIMES  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY Kim Perry

1 AN ACT relating to pharmacy audits.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 304.17A-741 is amended to read as follows:

4 When an audit of the records of a pharmacy is conducted by an auditing entity, it shall be  
5 subject to the following conditions:

6 (1) The auditing entity shall give at least thirty (30) days' written notice to the pharmacy  
7 prior to conducting the audit for each audit to be conducted;

8 (2) An audit performed by the auditing entity that involves clinical or professional  
9 judgment shall be conducted in consultation with a pharmacist;

10 (3) A pharmacy may use the records of a hospital, physician, or other practitioner as  
11 defined in KRS 217.015(35), or transmitted by any means of communication, for  
12 purposes of validating pharmacy records with respect to orders or refills of a drug;

13 (4) **An auditing entity shall not require a pharmacy to keep records for a period of**  
14 **time longer than two (2) years, or as required by state or federal law or**  
15 **regulation;**

16 **(5)** The recoupment of claims shall be based on the actual overpayment or  
17 underpayment of claims unless the pharmacy agrees to a settlement to the contrary;

18 **(6) [(5)]** A pharmacy shall be audited under the same standards and parameters as other  
19 similarly situated pharmacies audited by the auditing entity;

20 **(7) [(6)]** The period covered by the audit shall not exceed two (2) years from the date  
21 the claim was submitted for payment except if a longer period is allowed by federal  
22 law or if there is evidence of fraud;

23 **(8) [(7)]** An audit shall not be scheduled during the first seven (7) calendar days of any  
24 month, unless consented to by the pharmacy;

25 **(9) [(8)]** A preliminary audit report shall be delivered to the pharmacy within one  
26 hundred twenty (120) days after the exit interview;

27 **(10) [(9)]** A final audit report shall be delivered to the pharmacy within six (6) months

1 after receipt of the preliminary audit report or after all appeals have been exhausted,  
 2 whichever is later;

3 ~~(11)~~~~(10)~~ The auditing entity shall allow a pharmacy at least thirty (30) days following  
 4 receipt of the preliminary audit report to produce documentation to address any  
 5 discrepancies found during an audit;

6 ~~(12)~~~~(11)~~ The final audit report shall provide claim-level detail of the amounts and  
 7 reasons for each claim recovery found due. If no amounts have been found due, the  
 8 final audit report shall so state;

9 ~~(13)~~~~(12)~~ The auditing entity shall not receive payment based on~~[ a percentage of ]~~ the  
 10 amount recovered in an audit;~~[ and ]~~

11 ~~(14)~~~~(13)~~ The auditing entity shall conduct an exit interview at the close of the audit.  
 12 The exit interview shall be conducted at a time agreed to by the audited pharmacy.  
 13 The interview shall provide the audited pharmacy an opportunity to:

- 14 (a) Respond to questions from the auditing entity;
- 15 (b) Review and comment on the initial findings of the auditing entity; and
- 16 (c) Provide additional documentation to clarify the initial findings of the auditing  
 17 entity;

18 (15) If an audit results in the identification of any clerical or recordkeeping errors  
 19 such as typographical errors, scrivener's errors, omissions, or computer errors,  
 20 the pharmacy shall not be subject to recoupment of funds by the auditing entity  
 21 unless the auditing entity can provide proof of intent to commit fraud or the error  
 22 results in an actual overpayment to the pharmacy or the wrong medication being  
 23 dispensed to the patient. The pharmacy shall have the right to submit amended  
 24 claims within thirty (30) days of the discovery of an error to correct clerical or  
 25 recordkeeping errors in lieu of recoupment if the prescription was dispensed  
 26 according to requirements set forth in state or federal law;

27 (16) In the case of overpayment, the auditing entity may seek a refund or recoupment

1 of the overpayment in accordance with KRS 304.17A-712. The amount refunded  
 2 or recouped shall be limited to the amount paid to the pharmacy minus the  
 3 amount that should have been paid to the pharmacy absent the overpayment and  
 4 shall not include the dispensing fee if the correct medication was dispensed to the  
 5 patient; and

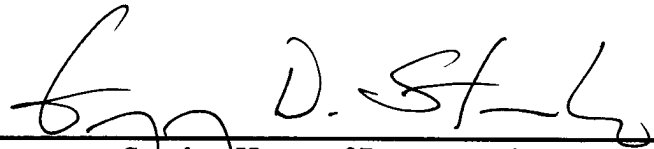
6 (17) Claims shall be paid pursuant to KRS 304.17A-702.

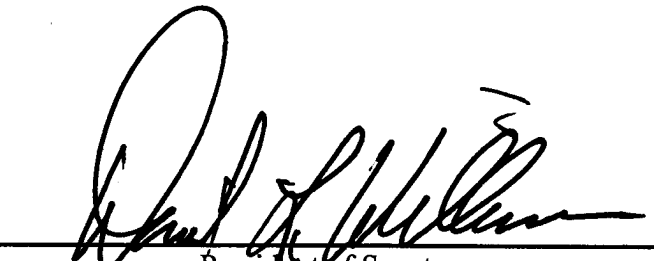
7 ➔Section 2. KRS 304.17A-745 is amended to read as follows:

8 KRS 304.17A-740 to 304.17A-743 shall not apply to any audit conducted by or on behalf  
 9 of a state agency~~[or a Medicaid managed care organization]~~ pursuant to KRS Chapter  
 10 205.

11 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO  
 12 READ AS FOLLOWS:

13 A managed care organization that provides Medicaid benefits pursuant to this chapter  
 14 shall comply with the provisions of KRS 304.17A-740 to 304.17A-743.

  
Speaker House of Representatives

  
President of Senate

Attest:   
Chief Clerk of House of Representatives

Approved   
Governor

Date 4-4-12